

**Harco Laboratories, Inc. and United Electrical,
Radio & Machine Workers of America (UE),
and its Local 299. Case 39-CA-1661**

31 August 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 30 March 1984 Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Union filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Harco Laboratories, Inc., Branford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Member Hunter agrees with the judge and with his colleagues that the names and addresses of bargaining unit employees are presumptively relevant. He recognizes, however, that this presumption may be rebutted by, *inter alia*, evidence that a Union has alternative means of obtaining the information. In the instant case, Member Hunter finds that the Respondent failed to rebut the presumption, for the reasons stated by the judge.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The issue is whether Harco Laboratories, Inc. (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), by having refused to honor the requests of United Electrical, Radio & Machine Workers of America (UE) and its Local 299 (the Union) for the addresses of employees of Respondent represented by the Union.

I heard the case in Hartford, Connecticut, on October 21, 1983.

On the entire record, including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The pleadings establish and I therefore find that the operations of Respondent, a Connecticut corporation engaged in manufacturing thermocouples and thermocouple harnesses, meet the Board's standard for nonretail enterprises. Respondent's answer admits that the Union is a labor organization as defined in the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

There is little factual dispute in this case. The Union was certified on November 11, 1979, as the exclusive collective-bargaining representative of the approximately 80 production and maintenance employees of Respondent at its plant in Branford, Connecticut. It was not until more than 1-1/2 years later that the Union and Respondent agreed on their first contract. That agreement was reached on August 24, 1981, at the end of a strike that lasted over 2-1/2 months. (Respondent alludes to alleged misconduct during that strike as a basis for its refusal to honor the Union's request. The evidence it offered is discussed later.) The first agreement was for a 1-year term. Upon its expiration in August 1982, the Respondent and the Union entered into a 3-year renewal contract in effect now. There was no evidence of any strike in 1982. The current contract does not have any union-security provisions.

One of the matters that may have given rise to the Union's request for addresses relates to the distribution of the U.E. News. Copies of that paper, up until about 1982, were shipped in bulk to UE locals to be passed out to employees they represent. The Union's stewards in the case before me distributed copies of the U.E. News either by passing them out to Respondent's employees in Respondent's parking lot or by placing a stack of those papers at a location inside Respondent's plant for use of the employees. The UE had notified its locals that it had computerized its facilities for distributing the U.E. News so that the paper could be mailed directly to the homes of employees represented by UE locals.

There appears to be another matter related to the Union's making its request. In late 1982, Respondent notified the Union that it intended to set up a second shift to operate for 6 months. After discussion, agreement was reached as to hours and premium pay for employees on that second shift. Respondent however rejected the union's request that the Union have a steward assigned to that shift with whom Respondent must deal. Respondent and the Union finally agreed to hold that matter in abeyance for a 30-day evaluation period. The second shift started operation with five employees on November 1, 1982. Shortly thereafter, the Union tried to reach one of the five second-shift employees at her home in order to discuss the developments on the second shift. It was unsuccessful. The Union had an old authorization card from that employee with an address thereon but she had moved.

B. The Union's Request and the Replies Thereto

On January 10, 1983, the Union orally asked Respondent for the address of its unit employees. Respondent wrote the Union on January 17, 1983, that the request was denied on the ground that the Union gave "no adequate reason" for the addresses and as the Union has "various alternative means" to get the addresses.

On January 25, 1983, the Union submitted a written request to Respondent for the addresses of bargaining unit employees. In that letter, the Union cited (1) its need to "keep in touch" with the nonmembers in the unit, who number about 35, (2) the fact that U.E. News can now be mailed automatically to employees' homes, and (3) the frequency with which it distributed bulletins to employees employed by Respondent and by other firms.

On January 27, 1983, Respondent answered that it saw no need to furnish the addresses as (a) the Union has a bulletin board in the plant and (b) in-plant representatives of the Union are capable of talking to the nonmembers.

For some reason, the Union reiterated its request on March 21, 1983, and again on May 3, 1983. In the May 3 letter, the Union noted that Respondent has hired many new employees whose home addresses are unknown to the Union. The record discloses a 30-percent turnover of employees in a 6-month period. Respondent answered on May 9 by referring the Union to its earlier letter.

C. Respondent's Reasons

As to Respondent's initial comments in denying the Union's request, the evidence discloses that the Union has a bulletin board in the plant on which it can post material subject to Respondent's approval; that approval was withheld in only one instance and then was granted when the Union made the change Respondent wanted. Stewards are free to meet with employees in the plant on nonworktime. Union representatives can obtain permission to enter Respondent's plant to meet employees at lunchtime. The Union's representative testified that he has obtained such permission but only after extensive inquiries. The Union's representative can use the employee parking lot to talk with employees or to distribute union literature there. The parking lot is in the rear of the plant and is used by all unit employees—90 percent of whom park there and the remainder are dropped off there.

At the hearing before me, Respondent offered another reason for its refusal to furnish the addresses. It explained that it had not previously given the Union that other reason because the Union had "never asked for the reasons" Respondent relied on for not having honored the Union's request. Respondent's personnel manager testified that Respondent declined the Union's request for addresses of unit employees because there was a "very cold" relationship between two groups of unit employees, i.e., those who picketed during the strike in the summer of 1981 and those who crossed the picket lines then. Respondent traced the coldness to reports Respondent received during the strike that cars of non-strikers were mysteriously damaged at night while parked in the driveways of their homes. To counter that

reason, the General Counsel adduced evidence that the Union's present chief steward had been one of the employees who worked during the strike and also that one of the employees whose car had been damaged had had cordial discussions at home with union representatives on several occasions since the strike.

D. Analysis

The Board has held that the names and addresses of unit employees, like wage data, are presumptively relevant to a union's role as bargaining agent.¹ Such information is "so basically related to the proper performance of [a union's] statutory duties [that] any special showing of specific relevance would be superfluous."² The Supreme court has noted, in a collateral case, that requiring disclosure of employee addresses to a union involved in an election promotes the objectives of the Act "by encouraging an informed employee electorate and by allowing unions the right of access to employees that management already possesses."³ Respondent has observed in its brief that the Board in 1974, held, in essence, that the decision by the Supreme Court is not dispositive and that an exclusive bargaining representative is not a fortiori entitled to a list of the names and addresses of unit employees without exploration of the relevancy and necessity for that information.⁴ The Board there ordered the employer to furnish the names and addresses as the General Counsel had shown that the information requested was both relevant and necessary to the union there in the performance of its statutory obligations and that adequate alternative means of communications with unit employees were not available. The Board, in that case, did not articulate any basis for not following the rationale of *Wyman-Gordon*, nor did it comment on the Second Circuit's holding, noted above at footnote 2. As has been observed, the trend of Board law has been to place less and less emphasis on a showing of alternate means of communication and more on the duty to furnish relevant information.⁵ In this last-cited case, the administrative law judge traced the case law developments in this area beginning with, *Standard Oil of California*, 166 NLRB 343 (1967), *enfd.* 399 F.2d 639 (9th Cir. 1968). He concluded that the Board's holding in *Autoprod, Inc.*, 223 NLRB 773 (1973), "appears to state flatly that a union is entitled to the addresses of unit employees, whether or not those addresses could be obtained by other means and a fortiori whether or not the union might be able to disseminate information to unit employees by other means than mailing." The administrative law judge then went on to characterize that approach as apparently "the mainstream of Board law." As noted below, that observation has proved out. At times the Board has considered the factor of accessibility. Thus, in *Georgetown Associates*, *supra* at fn. 1, the Board noted parenthetically that

¹ *Georgetown Holiday Inn*, 235 NLRB 485 (1978).

² *Prudential Insurance Co. v. NLRB*, 412 F.2d 77, 84 (2d Cir. 1969). Cf. *United Aircraft Corp.*, 181 NLRB 892 (1970), *enfd.* 434 F.2d 1198 (2d Cir. 1970).

³ *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969).

⁴ *Magma Cooper Co.*, 208 NLRB 329 (1974).

⁵ *Armstrong World Industries*, 254 NLRB 1239, 1244 (1981).

the union there could not readily reach the 50-unit employees because of their high turnover, the absence of union-security provisions, and because the stewards there were generally restricted to their own work areas. In the case before me, there is also a high employee turnover and an absence of a union-security provision. Further, one of the matters that gave rise to the union's request for the addresses was its inability to place a steward on the night shift.

I have already noted that little effort has been made to set out the rationale on which Respondent would have me dismiss the complaint. Perhaps the consideration underlying the approach urged by Respondent is the one forthrightly stated by Circuit Judge Friendly in his dissenting opinion in *Prudential*, supra. There, he observed that the court engaged in self-deception by accepting the view that the union there wanted the names and addresses of unit employees in order to poll them about contract proposals. He believed its real purpose was to engage in active solicitation of union membership and he stated three grounds on which he based that belief. Incidentally, none of those grounds are pertinent to the cases before me. Respondent does not suggest that the Union's real purpose in seeking the addresses is organizational.⁶ The specific facts of this case establish clearly that its goal is representational. In these circumstances and consistent with the current Board approach,⁷ I find that the information sought is relevant and necessary and that Respondent has not rebutted the presumption as it offered no evidence that it would be unduly burdensome to compile and furnish such a list.⁸ Respondent has not even addressed that last consideration.

Respondent's alternate contention is that its concern for the safety of those employees who worked during the 1981 strike outweighs the Union's need for addresses. That is patently an afterthought. It never mentioned that concern to the Union in its letters in which it had explained its position. Further, its attempt to account for that oversight made no sense to me. In any event, over 2 years had transpired from the time of the strike to the time it expressed its concern. I do not see how it could show a "clear and present danger of violence and harassment" sufficient to excuse its refusal to supply the addresses.⁹ The time lapse, if anything, seems to be healing old sores as evidence by the fact that the Union's chief steward is an individual who had crossed the picket line in 1981 and another employee, who also crossed that picket line, has friendly discussions in her home about the Union with one of its representatives.

At best, from Respondent's standpoint, the Union's chief steward told an employee who did not want to join the Union that she would be sorry. That could be an implied threat and it could be a statement implying that employees must stand together or lose. In context of this case, it is an isolated comment.

⁶ Respondent offered evidence that an employee was recently told by the Union's chief steward that she would "be sorry" when she refused to join the Union. That matter came up in a different context and is discussed separately below.

⁷ *Gehrich & Gehrich*, 258 NLRB 528, 535 (1981).

⁸ *Jecia Mining Co.*, 248 NLRB 1341, 1343 (1980).

⁹ *Shell Oil Co. v. NLRB*, 457 F.2d 615 (1972).

I find that Respondent's first contention lacks legal merit and further lacks sufficient factual support to justify its refusal to furnish the addresses of unit employees. As to Respondent's alternate contention, I find it pretextual.¹⁰

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing on and after January 10, 1983, to furnish to the Union the names and addresses of all bargaining unit employees, Respondent violated Section 8(a)(1) and (5) of the Act.

4. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, Harco Laboratories, Inc., Branford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Electrical, Radio & Machine Workers of America (UE) and its Local 299 by refusing to furnish the Union with a list of the names and addresses of the employees employed by Respondent in the unit represented by the Union at Respondent's plant in Branford, Connecticut.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative acts necessary to effectuate the policies of the Act.

(a) Furnish the Union with a list of the names and addresses of the employees in the unit represented by the Union at Respondent's plant in Branford Connecticut.

(b) Post at its Branford, Connecticut plant copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Officer-in-Charge for Subregion 39, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure

¹⁰ *Pearl Bookbinding Co.*, 213 NLRB 532, 536 (1974).

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain in good faith with United Electrical, Radio & Machine Workers (UE) and its Local 299 by refusing to honor its request for the

names and addresses of all the employees it represents in our Branford plant.

WE WILL not in any like or related manner interfere with, restrain, or coerce any of our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the above-named Union with a list of the names and addresses of the employees in the unit it represents at our Branford plant.

HARCO LABORATORIES, INC.